

## Department of Health and Human Services

## § 95.625

request to the head of the Federal program office within 30 days of the initial written disallowance determination. In such a reconsideration, the agency may take into account overall federal interests. The Department may grant a request for reconsideration if:

(a) The State submitted to the Department all information required under § 95.611, satisfactorily responded to all concerns raised by the Department and received a final letter of approval from the Department; or,

(b) The State requests reconsideration of a denial by submitting in a record information that addresses the following requirements:

(1) The acquisition must be reasonable, useful and necessary;

(2) The State's failure to obtain prior approval, which is reflected in a record, must have been inadvertent (i.e., the State did not knowingly avoid the prior approval requirements);

(3) The request was not previously denied by HHS;

(4) The acquisition must otherwise meet all other applicable Federal and State requirements, and would have been approved under Part 95, Subpart F had the State requested in a record, prior approval;

(5) The State must not have a record of recurrent failures, under any of the programs covered by the prior approval regulations, to comply with the requirement to obtain prior approval in a record, of its automatic data processing acquisitions (i.e., submissions under these procedures, from States that have failed in the past to acquire prior approval which is reflected in a record, in accordance with Part 95, Subpart F, may be denied);

[51 FR 3339, Jan. 27, 1986, as amended at 55 FR 4378, Feb. 7, 1990; 75 FR 66340, Oct. 28, 2010]

### § 95.624 Consideration for FFP in emergency situations.

For ADP equipment and services acquired by a State after December 1, 1985 to meet emergency situations, which preclude the State from following the requirements of § 95.611, the Department will consider providing FFP upon receipt of a request from the State which is reflected in a record. In order for the Department to consider

providing FFP in emergency situations, the following conditions must be met:

(a) The State must submit a request to the Department, prior to the acquisition of any ADP equipment or services. The request must be reflected in a record, and include:

(1) A brief description of the ADP equipment and/or services to be acquired and an estimate of their costs;

(2) A brief description of the circumstances which result in the State's need to proceed prior to obtaining approval from the Department; and

(3) A description of the harm which will be caused if the State does not acquire immediately the ADP equipment and services.

(b) Upon receipt of the information, the Department will within 14 days take one of the following actions:

(1) Inform the State in writing that the request has been disapproved and the reason for disapproval; or

(2) Inform the State in a communication reflected in a record, that the Department recognizes that an emergency exists and that within 90 days from the date of the State's initial request, the State must submit a formal request for approval which includes the information specified at § 95.611 in order for the ADP equipment or services acquisition to be considered for the Department's approval.

(c) If the Department approves the request submitted under paragraph (b) of this section, FFP will be available from the date the State acquires the ADP equipment and services.

[51 FR 3339, Jan. 27, 1986, as amended at 55 FR 4378, Feb. 7, 1990; 75 FR 66340, Oct. 28, 2010]

### § 95.625 Increased FFP for certain ADP systems.

(a) *General.* FFP is available at enhanced matching rates for the development of individual or integrated systems and the associated computer equipment that support the administration of State plans for Titles IV-D, IV-E, and/or XIX provided the systems meet the specifically applicable provisions referenced in paragraph (b) of the section.

(b) *Specific reference to other regulations.* The applicable regulations for

## § 95.626

the Title IV-D program are contained in 45 CFR Part 307. The applicable regulations for the Title IV-E program are contained in 45 CFR 1355.55. The applicable regulations for the Title XIX program are contained in 42 CFR Part 433, Subpart C.

[59 FR 30708, June 15, 1994]

### § 95.626 Independent Verification and Validation.

(a) An assessment for independent verification and validation (IV&V) analysis of a State's system development effort may be required in the case of APD projects that meet any of the following criteria:

(1) Are at risk of missing statutory or regulatory deadlines for automation that is intended to meet program requirements;

(2) Are at risk of failing to meet a critical milestone;

(3) Indicate the need for a new project or total system redesign;

(4) Are developing systems under waivers pursuant to sections 452(d)(3) or 627 of the Social Security Act;

(5) Are at risk of failure, major delay, or cost overrun in their systems development efforts;

(6) Fail to timely and completely submit APD updates or other required systems documentation.

(7) State's procurement policies put the project at risk, including a pattern of failing to pursue competition to the maximum extent feasible.

(8) State's failure to adequately involve the State program offices in the development and implementation of the project.

(b) Independent Verification and Validation efforts must be conducted by an entity that is independent from the State (unless the State receives an exception from the Department) and the entity selected must:

(1) Develop a project workplan. The plan must be provided directly to the Department at the same time it is given to the State.

(2) Review and make recommendations on both the management of the project, both State and vendor, and the technical aspects of the project. The IV&V provider must give the results of its analysis directly to the federal

## 45 CFR Subtitle A (10–1–12 Edition)

agencies that required the IV&V at the same time it reports to the State.

(3) Consult with all stakeholders and assess the user involvement and buy-in regarding system functionality and the system's ability to support program business needs.

(4) Conduct an analysis of past project performance sufficient to identify and make recommendations for improvement.

(5) Provide risk management assessment and capacity planning services.

(6) Develop performance metrics which allow tracking project completion against milestones set by the State.

(c) The acquisition document and contract for selecting the IV&V provider (or similar documents if IV&V services are provided by other State agencies) must include requirements regarding the experience and skills of the key personnel proposed for the IV&V analysis. The contract (or similar document if the IV&V services are provided by other State agencies) must specify by name the key personnel who actually will work on the project. The acquisition documents and contract for required IV&V services must be submitted to the Department for prior written approval.

[75 FR 66340, Oct. 28, 2010]

### § 95.627 Waivers.

(a) *Application for a waiver.* A State may apply for a waiver of any requirement in Subpart F by presenting an alternative approach. Waiver requests must be submitted and approved as part of the State's APD or APD Update.

(b) *Waiver approvals.* The Secretary, or his or her designee, may grant a State a waiver if the State demonstrates that it has an alternative approach to a requirement in this chapter that will safeguard the State and Federal Governments' interest and that enables the State to be in substantial compliance with the other requirements of this chapter.

(c) *Contents of waiver request.* The State's request for approval of an alternative approach or waiver of a requirement in this chapter must demonstrate why meeting the condition is unnecessary, diminishes the State's ability to